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In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1971

No. ————

HERBERT C. ENGLE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

OFFICIAL REPORTS

The Sixth Circuit Court of Appeals Case of *United States of America* v. *Herbert C. Engle,* No. 71-1816, is not yet officially reported. The unofficial report is attached as Appendix "A" to this Petition. The decision of the United States Sixth Circuit Court of Appeals was announced on April 27, 1972.

GROUND FOR JURISDICTION

The date of the Sixth Circuit Court of Appeals' judgment was April 27, 1972. The statutory authority for this appeal is 28 U.S.C., Section 1254 (1).

STATUTES

18 USC § 2314

§ 2314. Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting

Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or * * *

QUESTION PRESENTED FOR REVIEW

Does the double jeopardy clause of the United States Constitution prohibit a second trial on a charge of interstate transportation of stolen property when the only substantial variable consists of transporting the stolen property across *different state lines?*

STATEMENT OF THE CASE

The Petitioner, Engle, was charged in a multiple count indictment on October 29, 1965, with several violations of the United States Code. For the purposes of these proceedings, Count Five (5) of the multiple count indictment, charging a violation of 18 U.S.C., Section 2314 is of particular significance.

Count Five (5) charged that the Petitioner transported from Richmond, Virginia, to Cincinnati, Ohio, certain securities and money which had been stolen, converted and taken by fraud. Count Five (5) is reproduced as Appendix "B."

After trial by jury and a guilty verdict, the Court sentenced the Petitioner for the violation of 18 U.S.C. Section 2314 to a sentence of ten (10) years under the provisions

of 18 U.S.C. 4208 (a) (2). The Petitioner remains in the custody of the Attorney General.

STATEMENT OF THE FACTS

Beginning in 1958, the Petitioner operated several businesses in the Cincinnati area. The businesses concerned themselves with the leasing of automobiles.

In October of 1958, the Petitioner removed funds from certain corporations in which he was a principal officer and purchased U. S. Government securities in the form of bearer bonds.

In 1959, the Petitioner was indicted by a Federal Grand Jury which charged a violation of 18 U.S.C., Section 2314.

More specifically, the charge was that in October, 1958, the Petitioner did transport in interstate commerce from Dallas, Texas, to Cincinnati, Ohio, certain securities, to-wit: United States Treasury Bearer Bonds . . . . knowing the same to have been stolen, converted and taken by fraud; in violation of Section 2314, Title 18, U.S.C." See: Appendix "C" attached hereto.

On May 12, 1960, the Defendant entered a plea of guilty to "transporting in interstate commerce certain securities knowing the same to have been stolen, converted and taken by fraud in Violation of Title 18, Section 2314, U.S.C. See: Appendix "D" attached. The Court imposed a penalty of three (3) years on each count of the two-count indictment.

The Petitioner completed his sentence and his probationary period on the above charges in 1965.

Later, in 1965, a Federal Grand Jury indicted the Petitioner on a multi-count indictment, one of the counts charged a violation of 18 U.S.C., Section 2314. See: Appendix "B" attached. Count Five (5) of the 1965 indictment charges substantially the same crime as charged in the 1960 indictment, that is, the interstate transportation

from Richmond, Virginia, to Cincinnati, Ohio, of securities and money which securities and money had been stolen, converted and taken by fraud in violation of 18 U.S.C., Section 2314.

While the actual securities were not identical, they were derivative in that the original bearer bonds were exchanged for bonds of different denominations having different serial numbers but all having the same origin. The Sixth Circuit Court of Appeals in its decision at Page 5, Footnote 4 comments that the derivative nature of the bonds was not a factor in their decision and does not change the posture of the legal issues involved in the case.

ARGUMENT

In 1970 the Petitioner was found guilty of transporting certain securities and money from *Richmond, Virginia, to Cincinnati, Ohio,* which securities and money had been stolen, converted and taken by fraud and had a value in excess of Five Thousand ($5,000.00) Dollars knowing the said bonds to have been stolen converted and taken by fraud. As the result of this conviction the Petitioner was sentenced to ten (10) years in the custody of the Attorney General.

The offense took place on or about April 19, 1965.

A 1959 indictment against the Petitioner also charged a violation of 18 U.S.C., Section 2314. To this indictment, the Petitioner entered a plea of guilty and was sentenced to three (3) years in the custody of the Attorney General.

The 1959 indictment charged that the Petitioner did transport in interstate commerce from *Dallas, Texas, to Cincinnati, Ohio,* certain securities having a value of Two Hundred Fifty Thousand ($250,000.00) Dollars knowing the same to have been stolen converted and taken by fraud in violation of Section 2314, Title 18, U.S.C.

The securities in the 1965 indictment and the securities in the 1959 indictment were essentially the same securities. To illustrate this contention assume that a one hundred dollar bill is exchanged for five twenty-dollar bills and subsequently the five twenty-dollar bills are exchanged for ten ten-dollar bills. The form of the stolen property has been changed, but the substance remains the same.

At Page 5 of the Sixth Circuit Court of Appeals decision, the Court states that for the purposes of its opinion the "denominational exchange" factor did not change the legal issues involved in the case.

Therefore, an examination of the two indictments permits one to conclude that the only substantial difference in the indictments is that the 1959 indictment charged transportation of stolen securities from Dallas, Texas, to Cincinnati, Ohio, while the 1965 indictment charged transportation of the same stolen securities from Richmond, Virginia, to Cincinnati, Ohio.

Petitioner relies in part on *Ashe* v. *Swenson,* 397 U.S. 436 (1970) for the proposition that the Fifth Amendment guarantee against double jeopardy prohibits the Petitioner's second conviction for the "same offense" which involves both the "same evidence" and the "same transaction."

The decision of the Sixth Circuit Court of Appeals appears to sanction the indictment of a party for the interstate transportation of stolen property whenever that party crosses a new state line. .

Assume that the property stolen in California consisted of one hundred pounds of gold which was converted to five hundred pounds of silver in the State of Colorado, and assume further, that the silver was converted to ten thousand pounds of copper in the State of Illinois, and assume still further, that the copper was exchanged for one hundred thousand pounds of steel in the State of New York. The Petitioner's argument under *Ashe* v. *Swenson,*

supra would be that but one offense has been committed and but one trial would occur on the set of facts, conversion of the property and multi state transportation not withstanding.

In the case of *United States* v. *Irvine,* 98 U.S. 450 (1878), this Court held almost one hundred years ago that whenever the act or series of acts necessary to constitute a criminal withholding of money have transpired, the crime is completed. And, the Court rejected the argument that the withholding of funds for a twenty-year period constituted a new offense for every year, every month or every day that the money was withheld. The Court concluded that the crime was completed when the money was first withheld. The Petitioner adopts the position that the crime of interstate transportation of stolen property is completed when the first line is crossed. Subsequent crossings of state lines do not constitute separate offenses.

In the case of *United States* v. *Kissel,* 218 U.S. 601, this Court held with regard to the existence of a conspiracy that:

> "... contemplates bringing to pass a continuous result that will not continue without the cooperation of the conspirators to keep it up, and there is such continuous cooperation, it is a perversion of natural thought and of natural language to call such a continuous cooperation a cinematographic series of distinct conspiracies rather than to call it a single one."

The Petitioner suggests that the transportation of stolen property across separate state lines does not constitute a series of disinct crimes but rather a single crime within the meaning of the language in the *Kissel* case cited above.

The mere continuance of the result of a crime does not continue the crime.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

JAMES N. PERRY,
Attorney at Law
618 Carew Tower
Cincinnati, Ohio 45202
Attorney for Petitioner
an indigent

APPENDIX "A"

No. 71-1816

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. HERBERT C. ENGLE, *Defendant-Appellant.*	APPEAL from the United States District Court, Southern District of Ohio, Western Division.

Decided and Filed April 27, 1972.

Before: PHILLIPS, Chief Judge, WEICK and MILLER, Circuit Judges.

MILLER, Circuit Judge. This is a direct appeal from appellant's 1970 conviction in the court below for the offenses of interstate transportation of property obtained by fraud, pursuant to 18 U.S.C. § 2314, "wire fraud" in violation of 18 U.S.C. § 1343, and conspiracy pursuant to 18 U.S.C. § 371. Appellant received concurrent sentences on the three charges — three years each for wire fraud and conspiracy and ten years for interstate transportation of property obtained by fraud. The charges are based entirely on conduct occurring in 1965.

Prior to the bankruptcy of his businesses in December of 1958, the appellant Engle was an established and reputable businessman in the Cincinnati, Ohio area. His enterprises were conducted primarily through two corporations, the King Bee Leasing Company and Nationwide Automobile Leasing Corporation. In 1958, a large number of automobiles were purchased on credit from Ohio dealers in the names of the two corporations. These automobiles were shipped to Texas and sold at auction. The proceeds of the sales were placed in corporate bank accounts in the Tyler Bank and Trust Company of Tyler, Texas. In October of 1958 Engle executed corporate checks on these accounts in order to purchase cashiers' checks. Between October 21, 1958, and October 28, 1958, Engle used the cashiers' checks to purchase government bearer bonds having a face value of approximately $450,000.00.

On December 8, 1958, Nationwide Automobile Leasing Corporation was involuntarily declared a bankrupt. Similarly, on December 26, 1958, King Bee Leasing Company was so adjudicated. Engle retained the bonds purchased in Texas rather than turn them over to the Trustee in Bankruptcy. On June 3, 1959, he was indicted under a three-count indictment (1) pursuant to 18 U.S.C. § 152 for concealing U.S. Treasury Bearer Bonds in the principal amount of $450,000 from the Trustee in Bankruptcy, (2) for the interstate transportation of these bonds pursuant to 18 U.S.C. § 2314, and (3) for mail fraud pursuant to 18 U.S.C. § 1341. A guilty plea was entered and Engle was fined a total of $25,000.00 and sentenced to three years imprisonment plus a period of probation. The assets were not relinquished to the Trustee, however, nor was their location disclosed. The entire sentence was completed in 1965.

It was then that the alleged course of conduct which is the subject of the action before us is said to have com-

menced. It seems that Engle enlisted the assistance of an accomplice, Mary Elizabeth Yochum,[1] to aid him in converting the bonds to cash. Miss Yochum made use of the alias "Doris Cain" in a "scheme" which called for a series of denominational exchanges of the original bearer bonds in Detroit, Chicago and Richmond. An investigation of these transactions revealed that fruit was finally borne in Cincinnati when Miss Yochum cashed $50,000 worth of bonds which Engle had acquired by denominational exchange in Richmond.

On the basis of these activities the appellant and Miss Yochum were indicted on the present charges by a federal grand jury sitting in Cincinnati on October 29, 1965. The two were apprehended in Medford, Oregon on May 25, 1970 and trial was set for October 12, 1970.

Engle obtained as counsel the firm of Bailey, Alch and Gillis. On September 2, 1970, after an appearance by Geral Alch, a pretrial order was filed by the district court listing this firm as counsel of record. At about this time, the appellant gave Mr. Alch two checks which were to constitute the firm's retainer fee. When these checks were not honored by the bank on which they had been drawn and instead returned marked "account closed," relations between the Bailey firm and Engle became strained. On September 29, 1970, Mr. Alch filed a motion seeking to withdraw his law firm from the case. He stated in this motion that "circumstances have arisen which so seriously deteriorated the relationship between the Defendants and Counsel that Counsel feels unable to properly exert his efforts on their behalf." Additionally, Alch sought in the same motion to have the trial continued to November

[1] Miss Yochum was Engle's co-defendant at trial below. She was convicted along with Engle, sentenced and has completed her prison term.

2, 1970, so that the Motion to withdraw would be timely under local Rule 8 (e). Rule 8 (e) of the United States District Court for the Southern District of Ohio states that no trial attorney shall be permitted to withdraw from an action at any time later than twenty days in advance of trial. The district court denied the motion to withdraw. Among other reasons, the district court pointed out that "the defendant Engle, through Mr. Conroy, refuses to release Alch. . . ." Noting Engle's impecunious state and sympathizing to a certain extent with Alch's position, the court below sought to arrive at an equitable arrangement. On October 14, 1970, the court found Engle to be a pauper and appointed William Bailey, an associate of the Bailey, Alch and Gillis firm to represent him, thereby ensuring that the firm would be compensated for its efforts in Engle's behalf. During the course of the trial Engle made no objection to the representation provided by Mr. Bailey, who was successful in obtaining dismissal of one of the counts of the indictment on the ground of double jeopardy.

Appealing his 1970 conviction, appellant contends that he was denied effective assistance of counsel; that he was twice placed in jeopardy for the same offense; and that there was a failure of proof as to an element essential to the establishment of each of the three counts on which he was convicted. We need not deal at length with the first and last of these assertions. While Engle now complains of the process by which the firm of Bailey, Alch and Gillis was compelled to provide representation, it was because of his refusal to release Alch that the district court effected this rather novel arrangement. Engle knew that the firm did not wish to represent him. He cannot now complain of a situation that was largely of his own making. Furthermore, at no point during the proceeding did the appellant object to the efforts of the younger Mr. Bailey. Finally, our own review of the record indicates

that Mr. Bailey represented his client loyally and ably. Thus, while the relationship between Engle and his trial counsel was less than ideal, we do not find that his constitutional rights were infringed in this regard. Engle's third assertion is no more substantial. Essentially, he asks this Court to find that the bonds were properly withheld from the trustee in bankruptcy, an issue on which substantial evidence tending to show appellant's guilt was offered at trial. Again our review of the record does not suggest any constitutional or other denial of a legally protected right. Substantial evidence was offered by the prosecution upon which a jury could find beyond a reasonable doubt that Engle committed the offenses charged.[2] We turn to appellant's contention that he was twice placed in jeopardy for the "same offense."[3]

The appellant contends that the Double Jeopardy Clause of the Fifth Amendment prohibits the Government from twice prosecuting him for interstate transportation of fraudulently acquired property since the property alleged to have been transported in both instances was essentially the same.[4] Engle suggests that the 1965 transportations of the bonds was part of a continuing criminal episode

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[2] See *United States* v. *Caines*, 353 F.2d 276 (6th Cir. 1965), for the appropriate standard to be applied in assessing such claims.

[3] Appellant focuses his Fifth Amendment double jeopardy claim on the transportation count of the indictment brought pursuant to 18 U.S.C. § 2314, one of the statutes invoked against him in the 1959 indictment. He claims as well that the other two counts of the indictment were "tainted" by the fact that he was twice placed in jeopardy for the transportation offense. Since we reject his contention regarding the Section 2314 count, we do not reach his "taint" theory regarding the other two counts.

[4] Actually, the bonds involved were not always the same, as part of the "scheme" involved denominational exchanges. We do not find that this factor changes the posture of the legal issues involved in the case.

which was the subject of the 1959 prosecution and must therefore be considered a part of the "same offense" as that term is used in the Fifth Amendment.[5] He makes this claim even though the criminal activity which was the subject of the 1965 indictment occurred approximately six years *after his first conviction* and could not possibly have been joined in the earlier proceedings.

At the outset it should be noted that the Double Jeopardy Clause has been the subject of special scrutiny in recent years both on the part of courts and commentators. The importance of the fundamental guarantee afforded by this provision of the Bill of Rights has been recently emphasized by the Supreme Court in several major decisions. Of paramount significance is *Benton* v. *United States,* 395 U.S. 784 (1969), where the Court held the Double Jeopardy Clause applicable to the States, thereby overruling *Palko* v. *Connecticut,* 302 U.S. 319 (1937). In *Ashe* v. *Swenson,* 397 U.S. 436 (1970), the Court gave further content to the mandate of the clause by holding that the Fifth Amendment guarantee against double jeopardy embodies collateral estoppel as a constitutional requirement.[6] The scope and meaning of the clause have evoked wide comment and examination by legal scholars.[7]

There is general agreement that the Constitution's double jeopardy clause embodies "three separate constitu-

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[5] The Double Jeopardy Clause of the Fifth Amendment provides: ". . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . .."

[6] See also *North Carolina* v. *Pearce,* 395 U.S. 711 (1969); *Price* v. *Georgia,* 398 U.S. 323 (1970); *United States* v. *Jorn,* 400 U.S. 470 (1971); and *Simpson* v. *Florida,* 403 U.S. 384 (1971) for other recent significant Supreme Court decisions in this area.

[7] Having special merit are J. Sigler, *Double Jeopardy,* (1969) and Note, *Twice in Jeopardy,* 75 Yale L.J. 262 (1965). See also, Mayers and Yarbrough, *Bis Vexari: New Trials and Successive Prosecutions,* 74 Harv. L.Rev. 1 (1960).

tional protections." It proscribes a "second prosecution for the same offense after acquittal . . .; a second prosecution for the same offense after conviction . . .; [and] multiple punishment for the same offense." *North Carolina* v. *Pearce, supra,* 717.[8] The appellant seeks to invoke the second of these. Resolution of the question thus raised turns, of course, on the meaning to be ascribed to the phrase "same offense."

Although expressed in variable forms, the values which the Double Jeopardy Clause seeks to implement are well known and generally agreed upon.[9] The clause is essentially a rule of finality. It is intended to prevent vexations, piecemeal prosecution whether the result of an intent to harass, a desire to have more than one shot at obtaining a conviction or severe sentence, or mere prosecutorial caprice or carelessness. In *Benton* v. *Maryland, supra,* pp. 795-796, the Supreme Court reiterated its expression of the policy underlying the Double Jeopardy Clause, quoting Mr. Justice Black's statement in *Green* v. *United States, supra,* that "[t]he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty." Notwithstanding general agreement as to policy, the nature and scope of the rule actually applied has often varied. Such inconsistent application led one commentator to state more than thirty years ago: "The riddle of double jeopardy stands out today

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[8] See also, Note, *Twice in Jeopardy, supra,* pp. 265-266.

[9] See *Green* v. *United States,* 355 U.S. 184, 187-188 (1957), Note, *Twice in Jeopardy, supra,* pp. 266-267 and 277-279.

as one of the most commonly recognized yet most commonly misunderstood maxims in the law, the passage of time having served to burden it with confusion upon confusion."[10] A source of profound confusion has been the use of the phrase "same offense" by the framers of the Constitution.[11] Courts have not agreed as to the proper test to be applied to determine when a prosecution is based on the "same offense" as a prior prosecution and courts purporting to apply the same rule to similar facts have reached divergent results.

In attempting to give content to "same offense" most courts have applied in one form or another the "same evidence test" first enunciated nearly 175 years ago in *Vandercomb's* case.[12] As early as 1932 in *Blockburger* v. *United States,* 284 U.S. 299, the Supreme Court approved the test in a case involving a multiple count indictment. This court expressly approved it in the same context in *Rutkowski* v. *United States,* 149 F.2d 481 (6th Cir. 1945), and in *Rayborn* v. *United States,* 234 F.2d 368, 370 (6th Cir. 1956). The suggestion, sometimes advanced, that the Supreme Court rejected the test in cases involving multiple trials in *In Re Nielsen,* 131 U.S. 176 (1889), is not in accord with our interpretation of the court's opinion in that case. Indeed, Mr. Justice Bradley made it clear in his opinion in *Nielsen* that he was relying upon the well-established principle that an acquittal or conviction of a greater offense is a bar to a subsequent indictment for a

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[10] Note, 24 Minn. L. Rev. 522 (1940).

[11] See Sigler, *supra,* pp. 63-69, Note, *Twice in Jeopardy, supra,* pp. 267, et seq. Sigler is the author of the most authoritative recent work in the double jeopardy field. Of the problem posed by this phrase he has said: "Confusion is rampant in this branch of double jeopardy law."

[12] *The King* v. *Vandercomb and Abbott,* 2 Leach 708, 720, 168 Eng. Rep. 455, 461 (1796).

minor offense included in the former, quoting Wharton's Treatise on Criminal Law. There was no discussion of either test which we consider here. On the other hand, the court has apparently never directly held it to be the required construction where multiple trials are involved.

In *Ashe* v. *Swenson, supra,* a case holding, as noted above, that collateral estoppel is an ingredient of the Fifth Amendment guarantee against double jeopardy, Mr. Justice Brennan's concurring opinion argues strongly for rejection of the "same evidence" test and substitution of the "same transaction" test to determine the identity of offenses where separate trials are involved. His concern about the validity of the "same evidence" test in this context is that "it does not enforce but virtually annuls the constitutional guarantee," for example, permitting separate trials or prosecutions where a single criminal episode involves several victims. Under the Brennan test in this situation the prosecution would be required to join all of the charges as to each victim in a single trial. It is conceded that "same transaction" is not self-defining and that an exception would be required where a crime is not completed or not discovered despite diligence on the part of police until after commencement of a prosecution for other crimes arising from the same transaction.

The "same transaction" test has now been adopted by the American Law Institute and, according to Justice Brennan's opinion, "England, too, has abandoned its surviving rules against joinder of charges and has adopted the 'same transaction' test." Justices Douglas and Marshall joined in Justice Brennan's concurrence but the other justices did not. Indeed, Mr. Justice Harlan in a separate concurring opinion expressly refused to commit himself to it and in his dissenting opinion Chief Justice Burger emphatically rejected it.

As the Supreme Court has not indicated that the "same evidence" test approved in *Blockburger, supra,* does not apply to separate trials as well as to several charges at the same trial, we feel compelled to apply that principal here. *Rotkowski* v. *United States, supra; Rayborn* v. *United States, supra.* On that basis it is clear that the evidence at Engle's second trial was materially different from the evidence at the first trial in 1959 and that the same evidence was not required to sustain both charges. The plea of double jeopardy is therefore not available to Engle.[13]

Affirmed.

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[13] Indeed on the facts before us it may well be that double jeopardy would be unavailable to appellant even by application of a "same transaction" test. As the course of criminal conduct and activity for which Engle was convicted in 1970 could not have been known or prosecuted in 1959, although concededly bearing some relationship to the 1958 conduct, the recognized exception to the joinder element of the "same transaction" test would appear to apply.

APPENDIX "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Criminal No. 10977

UNITED STATES OF AMERICA

v.

MAURICE M. KLOPP,
HERBERT C. ENGLE,
a/k/a Charles Wilson Tennant, Jr.,
MARY ELIZABETH YOCUM,
a/k/a Doris C. Cain.

INDICTMENT

(18 USC Section 152)
(18 USC Section 371)
(18 USC Section 1343)
(18 USC Section 2314)

The Grand Jury charges:

* * *

COUNT 5

That on or about April 19, 1965 MARY ELIZABETH YOCHUM and HERBERT C. ENGLE did transport from Richmond, Virginia to Cincinnati, Ohio, in the Southern District of Ohio, Western Division, securities and money to wit: 10 U. S. Treasury Bonds, 2½%, of 1967/1972,

September 15, 1972, $5,000 par value with the following numbers contained thereon: 36399, 36400, 36401, 36403, 36404, 36405, 36406, 36402, 36407 and 36408, which securities and money had been stolen, converted and taken by fraud and had a value in excess of $5,000, and they then knew the said bonds to have been stolen, converted and taken by fraud;

All in violation of Section 2314, Title 18, U.S.C.

APPENDIX "C"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Number 9571

UNITED STATES OF AMERICA

v.

CHARLES WILSON TENNANT, JR.,
alias Herbert C. Engle

INDICTMENT

(18 USC, Section 2314)
(Filed June 3, 1959)

The Grand Jury charges:

COUNT ONE

That on or about October 22, 1958, CHARLES WILSON TENNANT, JR., alias Herbert C. Engle, did transport in interstate commerce fr[illegible]llas, Texas to Cincinnati, Ohio, in the Southern D[illegible] of Ohio, Western Division, certain securities, to wit: United States Treasury Bearer Bonds, Series 1967-72, of the value of $250,000.00, knowing the same to have been stolen, converted and taken by fraud; in violation of Section 2314, Title 18, United States Code.

COUNT TWO

That on or about November 6, 1958, CHARLES WILSON TENNANT, JR., alias Herbert C. Engle, did transport in interstate commerce from Holland, Michigan, to Cincinnati, Ohio, in the Southern District of Ohio, Western Division, certain goods and merchandise, to wit: Ford motor vehicles and accessories of the value of $6,677.46, knowing the same to have been stolen, converted and taken by fraud; in violation of Section 2314, Title 18, United States Code.

A True Bill.

/s/ FOREMAN

HUGH K. MARTIN
United States Attorney

/s/ THOMAS STUEVE
First Assistant U. S. Attorney

A True Copy of the Original. Filed 6-3-59.
Attest: JOHN P. LYTER, Clerk.
By /s/ DEPUTY CLERK
Certified 11-29-71.

APPENDIX "D"

Judgment and Commitment (Rev. 7-52)

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. 9571

UNITED STATES OF AMERICA

v.

CHARLES WILSON TENANT, JR.
alias Herbert C. Engle

(Filed May 12, 1960)

On this twelfth day of May, 1960 came the attorney for the government and the defendant appeared in person and being represented by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of Guilty of the offense of transporting in interstate commerce certain securities knowing the same to have been stolen, converted and taken by fraud in violation of Title 18, Section 2314, U.S. Code as charged in the Indictment and the court having asked the defendant whether he has anything to say why judgment should

not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of THREE (3) YEARS on each of Counts 1 and 2 of the Indictment.

IT IS FURTHER ADJUDGED that defendant Pay a Fine of TEN THOUSAND ($10,000.00) DOLLARS on each of Counts 1 and 2 of this Indictment, making a total Fine of TWENTY THOUSAND ($20,000.00) DOLLARS in this Cause, and that defendant stand committed until the payment of said Fine or until he is otherwise discharged by law.

IT IS FURTHER ADJUDGED that sentence of imprisonment in this cause be suspended and that defendant be placed on probation on each count for said period of Five (5) Years.

IT IS FURTHER ADJUDGED that sentence of imprisonment in this cause begin at the expiration and legal termination of the sentence this day imposed in Criminal Cause 9572 of this Court.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ CARL A. WEINMAN
United States District Judge

A True Copy of the Original Filed 5-12-60.
Attest: JOHN D. LYTER, Clerk

By /s/ W. SCOTT BROWN, Deputy
Certified 11-29-71.